TESTIMONY IN OPPOSITION TO GENERAL ASSEMBLY BILL No. 5511 - AN ACT CONCERNING THE BUDGET, SPECIAL ASSESSMENT AND ASSIGNMENT OF FUTURE INCOME APPROVAL PROCESS IN COMMON INTEREST OWNERSHIP COMMUNITIES

MARCH 29, 2012

Good morning Senator Coleman, Representative Fox, Senator Kissel, Representative Hetherington and members of the Judiciary Committee. Thank you for the opportunity to provide testimony on behalf of Imagineers, LLC ("Imagineers").

I am Karl Kuegler, Jr. of Imagineers, LLC where I serve as the Director of Property Management for our common interest community management division. From our offices located in Hartford and Seymour, we serve about 155 Connecticut common interest communities comprising about 14,000 homes. Imagineers is registered with the Department of Consumer Protection as a Community Association Manager holding registration number 0001 and has been serving Connecticut common interest communities for 31 years. I have over 22 years experience in common interest community management. Imagineers is a member of the Connecticut Chapter of Community Associations Institute. I serve on the organization's Legislative Action Committee and chair the organization's annual state educational conference.

Imagineers has concerns regarding several portions of this bill and is therefore in opposition to it. The following is a summary of some of our concerns:

- Section 1 (a) & (b) of SB5511 makes a major change to the budget approval process for some common interest communities. The 2009 revisions to the Common Interest Ownership Act which took effect on July 1, 2010, took the procedures for budget and special assessment approval that were found to be effective in the majority of the communities created after 1984 and applied them to all communities including those created prior to 1984. The majority of the communities created prior to 1984 up to July 1, 2010 had provisions in which the Board of Directors approved the operating budget and any special assessments with only the requirement to "present" it to the owners. The provisions used for the last 25 plus years in communities created after 1984 differed in that although the Board of Directors still approved the budget and special assessments, the owners now had the opportunity to ratify the budget and special assessments greater than 15% of the total annual operating budget. (The July 1, 2010 revisions clarified the 15% to be defined as the aggregate of special assessments in any one budget period.) The ratification procedure provides that for the budget and/or special assessment equaling more than 15% of the total of the annual budget to be rejected, a majority of "all" owners most vote to reject the budget or assessment. What in essence the change created was a safety measure to keep Boards from putting in place a budget or assessment that greater than a majority of the community would not be in favor of. The changes proposed in SB5511 would make the vote requirement to reject the budget to equal a majority of those voting at the meeting for those communities that do not have a larger number required in their declaration. In some cases this will be regardless of how many unit owners are in attendance at the meeting.

  The drafters of the original language took into consideration that annual budget meetings are typically not well attended especially when the majority of the homeowners are content with proposed budget. By changing the provisions of the law, the budgets will be instead decided in some cases by a vocal minority portion of the community. It does not seem democratic that a Board of Directors that is duly elected by a vote of its community

members and that is tasked with the governance of the community's budget matters, can then be overturned by a vocal minority interest.

It has been my experience in the 22 plus years of serving communities (both created before and after 1984) that Boards take very seriously the anticipated response to the budgets they approve especially when the budget calls for an increase in common fee rates. It may be a reasonable conclusion that Boards have potentially been concerned to a fault when taken into consideration the number of communities which are currently underfunded in regards to capital expenditures which have now come due. Many of the fee increases occurring in communities are not only a result of rising costs, but a direct result of years of underfunding regular maintenance and failure to set aside adequate funding for future capital expenditures. The fact that an association is not funding capital components does not prevent the roof from aging, the boilers from failing and the asphalt roadways from breaking down. Ultimately, an association can only forgo capital repairs so long before there is no choice but to make the repairs in order to maintain a safe living environment and to maintain the values of their homes.

2011 was a year that constituted the perfect storm. Associations began the year with ice damming and snow loads that required unexpected expenses that were not discretionary. The year continued with the tropical storm which caused tree damage and water flooding basements when sump pumps lost power. The October 29th snow storm brought further hardship to communities with repeat power outages resulting in basement flooding and extensive power outages. Although there may have been some assistance in funding interior damage from ice damming and some insurance funding towards resulting damage from basement flooding, associations were faced with per unit deductibles for ice damming, policy exclusions on basement flooding and no coverage for the removal and pruning of trees that fell during the tropical storm or October snow event. The only tree work that would have been covered by insurance would have been a tree that fell on an insured structure. The associations have an obligation to address these needs and need to have a viable way to fund both regular and unexpected expenses.

Communities are further being challenged by changes made to the FHA approval process in which associations are now required to fund a minimum of 10% of their annual operating budget to fund capital reserves and deferred maintenance as well as adequately budgeting for insurance deductibles. Further adding to the difficulty that unit owners are having in refinancing or selling their homes is the adoption of these FHA requirements as loan requirements by many lenders.

- Section 1 (e) of SB5511 makes a major change to the ability to seek approval for the association to secure loans in some common interest communities. Currently the Common Interest Ownership Act requires owners of units to which at least a majority of the votes in the association are allocated, or any larger percentage or fraction stated in the declaration, must vote in favor of or agree to such assignment. The change would instead make the vote requirement to reject to a majority of all unit owners or any larger number specified in the declaration votes to reject the assignment at such meeting or in the balloting, the assignment shall be rejected. If, at such meeting or in the balloting, a majority of all unit owners or any larger number specified in the declaration does not vote to reject the assignment, the assignment shall be approved. The absence of a quorum at such meeting or participating in the vote by ballot shall not affect the rejection or approval of the assignment. This in affect creates a situation where potentially a very small number of the members of the community will be determining if a loan is approved. Loans are a viable and necessary funding source for associations that need to

be considered wisely taking into consideration their timing verses other capital projects looming in the future and considering the cost to carry the loan. Associations are typically receiving loans that have a repayment period of 5 to 10 years or greater. These costs need to be funded on an annual basis either through special assessments or common fees. Changes proposed earlier in this bill could jeopardize the ability for an association to properly fund the loan repayment in future years.

I respectfully ask that you consider the following when reviewing concerns raised regarding the operation of common interest communities. Each unit owner has the right to put their name forward to serve on their association's board and/or vote for who does govern matters as a board of directors. Each unit owner has the opportunity and responsibility to review in advance of purchasing a home in a common interest community the governing documents and laws impacting the form of ownership they are entering into. All too often owners purchase without fully understanding the aspects of operating the community that are entrusted to the elected board of directors. Many associations already have a very difficult time seeking members to serve on their Board of Directors. The changes proposed to the Common Interest Ownership Act will only further add to this problem. Each association has assigned to it specific responsibilities to maintain and operate the community for the benefit of the unit owners. The Board is charged with the responsibility to ensure that obligations of the association to its members are adhered to. These changes proposed to the statute compromise the ability of boards to fulfill this obligation. In addition, safe guards are in place which were better defined in the 2009 revision to the Common Interest Ownership Act that afford the members of an association the ability to remove members of the board if they disagree with their actions and decisions. One of the methods is to call a meeting for that purpose by the collection of 20% of the owners' signatures. At that meeting, subject to the association's quorum requirement, a majority vote of those present may remove the member or members of the board as per the call of the petition. The Board is required to call for and schedule the meeting within a prescribed time period otherwise the meeting can be directly noticed by the requesting association members.

Furthermore, there are provisions in the governing documents and especially in the revised 2009 Common Interest Ownership Act, that allow individual owners to have greater access to information, to attend meetings of the board, to be heard by the board, to affect change in the association and to keep the association's operation in check. A commonly used selling point for purchasing a home in a common interest community is the care free living that is the benefit of not having to worry about certain aspects of the care for your home. The ironic fact is that a group of these owners instead agree to volunteer their time as Board members taking on the task and responsibility of ensuring that the maintenance and operation of all the units is properly facilitated. The changes to the Common Interest Ownership Act put into place on July 1, 2010 took steps to create more transparency and to ensure that owners have greater control over the operation of their common interest community. The benefits of the changes have had a positive impact and will only increase with increased education and promotion.